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5 UNITED STATES DISTRICT COURT
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7 DISTRICT OF NEVADA

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10 UNITED STATES OF AMERICA,

11 Plaintiff,

12 v.

13 JOSE ROJAS-GUZMAN,

14 Defendant.

15 Case No. 3:10-cr-00109-HDM-CSD

16 ORDER

17 UNITED STATES OF AMERICA,

18 Plaintiff,

19 v.

20 GUADALUPE ROJAS-GUZMAN,

21 Defendant.

22 Case No. 3:11-cr-00088-HDM-CSD

23 ORDER

24 Before the court is a motion to reduce sentence pursuant to
25 U.S.C. § 3582(c)(1)(A) filed by defendant Guadalupe Rojas-
26 Guzman, also known as Jose Rojas-Guzman. (ECF No. 258 in Case No.
27 3:10-cr-00109-HDM-CSD; ECF No. 108 in Case No. 3:11-cr-00088-HDM-
28 CSD). Pursuant to Second Amended General Order 2020-06, the Federal
Public Defender has filed a notice of non-supplementation (ECF No.
260 in Case No. 3:10-cr-00109-HDM-CSD; ECF No. 111 in Case No.
3:11-cr-00088-HDM-CSD). The government has opposed the defendant's
motion. (ECF No. 262 in Case No. 3:10-cr-00109-HDM-CSD; ECF No.
112 in Case No. 3:11-cr-00088-HDM-CSD). The defendant has not filed
a reply, and the time for doing so has expired.

1 **I. Background**

2 On December 27, 2011, the defendant was found guilty, pursuant
3 to jury verdict, of one count of conspiracy to possess with intent
4 to distribute 50 grams or more of actual methamphetamine, one count
5 of distribution of 50 grams or more of actual methamphetamine, and
6 one count of possession with intent to distribute 50 grams or more
7 of actual methamphetamine. (ECF No. 135 in Case No. 3:10-cr-00109-
8 HDM-CSD). On May 23, 2012, the defendant pleaded guilty, pursuant
9 to an agreement, to one count of unlawful reentry by a deported,
10 removed, or excluded alien. (ECF Nos. 24 & 35 in Case No. 3:11-
11 cr-00088-HDM-CSD). On July 30, 2012, the defendant was sentenced
12 to 264 months on the drug counts and 240 months in the immigration
13 case, all terms concurrent. (ECF Nos. 179 & 181 in Case No. 3:10-
14 cr-00109-HDM-CSD; ECF Nos. 30 & 32 in Case No. 3:11-cr-00088-HDM-
15 CSD). The defendant's sentence on the drug counts was later reduced
16 to 240 months pursuant to the stipulation of the parties, 18 U.S.C.
17 § 3582(c) (2) and Amendment 782. (ECF No. 202 in Case No. 3:10-cr-
18 00109-HDM-CSD).

19 The defendant has twice filed motions for sentence reduction
20 under 18 U.S.C. § 3582(c) (1) (A). The second motion was granted, in
21 part, and the defendant's sentences were reduced to 212 months.
22 (ECF Nos. 251 & 252 in Case No. 3:10-cr-00190-HDM-CSD; ECF Nos.
23 101 & 102 in Case No. 3:11-cr-00088-HDM-CSD). With a current
24 projected release date of October 1, 2025,¹ the defendant now --
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¹ See <https://www.bop.gov/inmateloc//> (last visited Sept. 16,
28 2024).

1 for the third time -- seeks a reduction of sentence under
 2 § 3582(c)(1)(A).

3 **II. Standard**

4 Section 3582(c)(1)(A) provides, in relevant part:

5 [T]he court, . . . upon motion of the defendant after
 6 the defendant has fully exhausted all administrative
 7 rights to appeal a failure of the Bureau of Prisons to
 8 bring a motion on the defendant's behalf or the lapse of
 9 30 days from the receipt of such a request by the warden
 10 of the defendant's facility, whichever is earlier, may
 11 reduce the term of imprisonment (and may impose a term
 12 of probation or supervised release with or without
 13 conditions that does not exceed the unserved portion of
 14 the original term of imprisonment), after considering
 15 the factors set forth in section 3553(a) to the extent
 16 that they are applicable, if it finds that--

17 (i) extraordinary and compelling reasons warrant such a
 18 reduction;

19 . . .

20 and that such a reduction is consistent with applicable
 21 policy statements issued by the Sentencing Commission.²

22 The applicable policy statement is set forth in U.S.S.G.
 23 § 1B1.13.³ Section 1B1.13 provides, in relevant part, that a

24 ² In addition to "extraordinary and compelling reasons," the court
 25 may grant a motion if "the defendant is at least 70 years of age,
 26 has served at least 30 years in prison, pursuant to a sentence
 27 imposed under section 3559(c), for the offense or offenses for
 28 which the defendant is currently imprisoned, and a determination
 has been made by the Director of the Bureau of Prisons that the
 defendant is not a danger to the safety of any other person or the
 community, as provided under section 3142(g)." 18 U.S.C.
 § 3582(c)(1)(A)(ii). The defendant has not served more than thirty
 years in prison and is not at least 70 years old, so this provision
 does not apply.

29 ³ *United States v. Aruda*, 993 F.3d 797, 801-02 (9th Cir. 2021),
 30 which held that the version of § 1B1.13 then in effect was not an
 31 "applicable policy statement" binding on the courts, no longer
 32 controls following the November 2023 amendments to § 1B1.13. See
 33 *United States v. Eklund*, 2024 WL 623903, at *1 (D. Alaska Feb. 14,
 34 2024); *United States v. Arcila*, 2024 WL 578688, at *2 (D. Or. Feb.

1 § 3582(c)(1)(A) motion may be granted upon a finding that: (1)
 2 extraordinary and compelling reasons warrant a reduction; (2) the
 3 defendant is not a danger to the safety of any other person or to
 4 the community, as provided in 18 U.S.S. § 3142(g); and (3) the
 5 reduction is consistent with the policy statement.

6 A defendant is not entitled to be present for any hearing on
 7 a motion for compassionate release. See Fed. R. Crim. P. 43(b)(4).

8 **III. Analysis**

9 A. Exhaustion

10 Before an inmate may file a motion for relief pursuant to
 11 § 3582(c)(1)(A), he must first present his request to the warden
 12 of his institution. The motion may be filed in court after the
 13 “defendant has fully exhausted all administrative rights to appeal
 14 a failure of the Bureau of Prisons to bring a motion on [his]
 15 behalf” or 30 days have passed from the warden’s receipt of his
 16 request, whichever is earlier.

17 The defendant filed a request for early release with the
 18 warden on April 20, 2024, and more than thirty days have passed
 19 since that time. (Ex. A to Mot.) The government does not dispute
 20 that the motion is exhausted. Accordingly, the court may consider
 21 the defendant’s motion.

22 B. Extraordinary and Compelling Reasons

23 Section 1B1.13 sets forth several examples of extraordinary
 24 and compelling reasons. The defendant’s motion relies on
 25 subsections (b)(5) and (b)(6). Section 1B1.13(b)(6) provides:

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 27
 28 12, 2024); *United States v. Ashcraft*, 2024 WL 519966, at *1 (E.D. Cal. Feb. 9, 2024).

If a defendant received an unusually long sentence and has served at least 10 years of the term of imprisonment, a change in the law (other than an amendment to the Guidelines Manual that has not been made retroactive) may be considered in determining whether the defendant presents an extraordinary and compelling reason, but only where such change would produce a gross disparity between the sentence being served and the sentence likely to be imposed at the time the motion is filed, and after full consideration of the defendant's individualized circumstances.

Section 1B1.13(b) (5) provides that extraordinary and compelling reasons might exist where:

The defendant presents any other circumstance or combination of circumstances that, when considered by themselves or together with any of the reasons described in paragraphs (1) through (4), are similar in gravity to those described in paragraphs (1) through (4).

Subsections (1) through (4) cover relate to: (1) the medical circumstances of the defendant, (2) the age of the defendant, (3) the family circumstances of the defendant, and (4) circumstances where the defendant was the victim of abuse.

The defendant argues that extraordinary and compelling reasons exists on the following grounds: (1) his sentence, based on the offense level for actual methamphetamine, is grossly disparate from the sentence he would have received if his sentence had been based on the offense level for a mixture containing methamphetamine; (2) his sentence greatly exceeds the typical sentence for his crime; (3) he would qualify for safety-valve treatment if he were sentenced today; and (4) his immigration detainer has made his confinement longer and more difficult than it is for other similarly situated inmates.

1. Methamphetamine disparity

Under the United States Sentencing Guidelines, the base offense level for a mixture or substance containing

1 methamphetamine is lower than the base offense level for the same
2 weight of actual methamphetamine. The defendant's sentencing range
3 here was derived from the base offense level for actual
4 methamphetamine, and he argues that the disparity between his
5 sentence and the sentence he would have received using the offense
6 level for a mixture or substance amounts to extraordinary and
7 compelling reasons for a sentence reduction. There are three
8 reasons the defendant's argument does not justify relief. First,
9 the disparity the defendant identifies existed at the time he was
10 sentenced and is not, therefore, based on a change in the law as
11 set forth in § 1B1.13(b) (6). Second, the court properly sentenced
12 the defendant under the guideline for actual methamphetamine
13 because the Guidelines required as much. See U.S.S.G. § 2D1.1(c)
14 note B (the court must apply "the offense level determined by the
15 entire weight of the mixture or substance, or the offense level
16 determined by the weight of the PCP (actual), amphetamine (actual),
17 or methamphetamine (actual), whichever is greater"); see also
18 *United States v. Rodriguez*, 921 F.3d 1149, 1154 n.3 (9th Cir.
19 2019). Finally, the disparity the defendant cites is not similar
20 in gravity to the circumstances set forth in U.S.S.G.
21 § 1B1.13(b) (1)-(4) as provided in § 1B1.13(b) (5).

22 2. Typical Sentences

23 The defendant argues that his sentence greatly exceeds
24 sentences given to other similarly, situated defendants. This,
25 again, is not an argument based on any change in the law and is
26 not similar in gravity to the circumstances identified in
27 § 1B1.13(b) (1)-(4). This argument also does not justify a sentence
28 reduction in this case.

1 3. Safety Valve

2 At the time the defendant was sentenced, safety-valve relief
3 was not available to any defendant having "more than 1 criminal
4 history point." 18 U.S.C. § 3553(f)(1) (2010). A December 2018
5 amendment raised this threshold, and the defendant argues that
6 after this change he would now qualify for safety-valve relief.
7 However, the defendant had only one criminal history point at
8 sentencing. Thus, as he did not have "more than 1 criminal history
9 point," it was not his criminal history points that rendered him
10 ineligible for relief. Rather, the defendant was - and remains -
11 ineligible because he received a two-level enhancement under
12 U.S.S.G. § 3B1.1(c) for being an organizer, leader, manager or
13 supervisor in the criminal activity. (PSR ¶ 30; ECF No. 237).
14 Section 3553(f)(4) bars safety-valve relief under these
15 circumstances. See also U.S.S.G. § 5C1.2(a)(4) & app. n.5. Because
16 the defendant is not safety-valve eligible, this argument does not
17 justify a sentence reduction in this case.

18 4. Immigration Detainer

19 The defendant argues that his immigration detainer has made
20 his confinement harsher and longer than it otherwise would be
21 because he cannot accrue credits toward his sentence and
22 participate in rehabilitative programs that are available to other
23 inmates. The court agrees with other courts that have addressed
24 this same argument and concludes that the consequences of an
25 immigration detainer do not amount to extraordinary and compelling
26 reasons justifying a sentence reduction. See, e.g., *United States*
27 *v. Ibrahim*, 2024 WL 554548, at *5 (D.S.D. Feb. 12, 2024).

28

Finally, the defendant cites "significant rehabilitation efforts" as a basis for relief. But he does not substantiate this claim in any way. Further, rehabilitation alone cannot support a finding of extraordinary and compelling reasons for a sentence reduction. U.S.S.G. § 1B1.13(d).

6 | V. Conclusion

7 In accordance with the foregoing, IT IS THEREFORE ORDERED
8 that the motion for sentence reduction pursuant to 18 U.S.C. §
9 3582(c)(1)(A) (ECF No. 258 in Case No. 3:10-cr-00109-HDM-CSD; ECF
10 No. 108 in Case No. 3:11-cr-00088-HDM-CSD) is hereby DENIED.

11 IT IS SO ORDERED.

12 DATED: This 7th day of October, 2024.

Howard D McKibben

UNITED STATES DISTRICT JUDGE